IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 26TH OCTOBER 2007 / 4TH KARTHIKA 1929

WP(C).No. 28266 of 2006(M)

PETITIONER:

K.C. JANARDHANAN,
HIGH SCHOOL ASSISTANT, GOVERNMENT HIGHER SECONDARY SCHOOL, PATTIAM, KANNUR DISTRICT.

BY ADV. SRI.P.M.PAREETH

RESPONDENTS:

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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   GENERAL EDUCATION DEPARTMENT, GOVT.SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **ACCOUNTANT GENERAL, THIRUVANANTHAPURAM.**

3. **DEPUTY DIRECTOR OF EDUCATION, KANNUR.**

4. **PRINCIPAL,**
   G.H.S.S. PATTIAM, KANNUR DISTRICT.

BY SR.GOVERNMENT PLEADER SMT. M.R. SREELATHA for R1 to R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.28266/2006 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PAY FIXATION STATEMENT DTD. 21/03/94.**

EXT.P2: **COPY OF THE AUDIT OBJECTION (AUDIT ENQUIRY) NO. 32 DTD. NIL).**

EXT.P3: **COPY OF THE REPRESENTATION DTD. 28/02/03 SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT.**

EXT.P4: **COPY OF THE G.O.(P) NO.101/80/(167)/FIN. DTD. 30/01/80.**

EXT.P5: **COPY OF THE LETTER NO.27947/03/G.EDN.DTD. 11/08/03 AS ENDORSED BY THE THIRD RESPONDENT VIDE ENDORSEMENT ON E1/18095/2003 DTD. 24/08/03.**

EXT.P6: **COPY OF THE DIRECTION NO.NIL DTD. 8/12/03 ISSUED BY THE FOURTH RESPONDENT.**

EXT.P7: **COPY OF THE G.O.(P) NO.592/03/FIN. DTD. 10/11/03.**

EXT.P8: **COPY OF THE JUDGMENT DTD. 29/06/06 IN WP(C) NO.568/04 OF THIS HON'BLE COURT.**

EXT.P9: **COPY OF THE ORDER NO.G.O.(RT) NO.4151/06/G.EDN.DTD. 25/09/06.**

EXT.P10: **COPY OF THE JUDGMENT DTD. 5/06/03 IN O.P.NO.12457/01 OF THIS HON'BLE COURT.**

EXT.P11: **COPY OF THE JUDGMENT DTD. 5/10/04 IN WP(C) NO. 35786/03 OF THIS HON'BLE COURT.**

/TRUE COPY/

P.A.TO JUDGE

KSS

S. SIRI JAGAN, J.

WP(C) No. 28266 OF 2006 M

Dated this the 26th October, 2007.

JUDGMENT

When the 1992 pay revision orders came into force petitioner filed his option to come over to the new scale of pay. That option was accepted and his pay was fixed accordingly. That was on 21.3.1994. After nine years, Ext.P2 audit objection was raised stating that since the option submitted by the petitioner is unacceptable his pay is liable to be refixed and the excess amount drawn by him refunded. Petitioner filed Ext.P3 representation seeking re-option. This was rejected by Ext.P5 order and by Ext.P6 the petitioner has been directed to refund an amount of Rs.30,611/-. Petitioner's further representation to the Government was also rejected by Ext.P9 order. The petitioner challenges Exts.P2, P6 and P9 orders.

2. Although the petitioner challenges Ext.P2, now he confines his relief against Exts.P6 and P9 and seeks only a chance to submit re-option. Petitioner's contention is that by Ext.P4 order the Government had held that re-option is permissible where a reduction

the revised pay fixed takes place consequent to audit scrutiny, which can be reduced by a change of option. According to the petitioner Ext.P4 is squarely applicable to the petitioner and therefore he is entitled to re-opt for avoiding the reduction in pay. This contention has been rejected in Ext.P9 order holding that Ext.P4 is applicable only to 1978 pay revision and not to 1992 pay revision. In answer to the same the petitioner relies on Ext.P10 judgment of this Court in respect of an identically situated employee wherein a learned single Judge of this Court held that Ext.P4 Government order permits such re-option in respect of 1992 pay revision also.

3. In the counter affidavit filed by the third respondent the contentions in Ext.P9 order are reiterated.

4. I have heard the learned counsel for the petitioner as also the learned Government Pleader.

5. In Ext.P10 judgment the learned Judge held as follows in paragraph 2:-

> "The fixation of pay approved by the competent authority happens to be revised after several years on the basis of audit objection. The employee is in no way responsible for the said fixation. Therefore, this Court has been consistently taking the view that if amounts are paid to the employees due to the errors on the part of the controlling officers, the same should not be recovered. Fixation happened to be revised in this cased on the basis of an audit objection.

> As stated earlier the employee is in no way responsible for the said mistake. In such circumstances, unless re-option is not allowed, the same will cause serious prejudice. The circumstances as per Ext.P4 Government order dated 1.5.2000. The petitioner relies on Ext.P5 Government order where under re-option was allowed on the basis of an audit objection. If the Government order dated 30.1.1980 was not in force after the issuance of the pay revision order of 1998. Est.P5 order would not have been issued."

6. I am in full agreement with the said judgment. Even without Ext.P10 also when an option submitted by an employee is cancelled by an audit objection after several years, the concerned employee is entitled to submit a re-option because the state of affairs is not brought about by any mistake on the part of the employee but on account of subsequent decision. Therefore, if, by a re-option the reduction in pay of the employee can be avoided, certainly natural justice demands that such government employee should be given a chance to re-opt. Further I find that the guidelines in Ext.P4 G.O for acceptance of re-option was made inoperative only with effect from 25.11.1998. If Ext.P4 was applicable only to 1978 pay revision, it was not necessary to issue Ext.P7 G.O stating that the guidelines regarding acceptance of re-option as per Ext.P4 will be in operative with effect from 25.11.1998. That would make it abundantly clear that prior to 25.11.1998 Ext.P4 order was still in force in respect of all

pay revisions. As I have stated earlier, even otherwise natural justice demands that government servants put in this difficult situation after a number of years, should certainly be given a chance to re-opt to avoid reduction in pay.

7. In the above circumstances Exts.P5, P6 and P9 orders are quashed. Accordingly the first respondent shall permit the petitioner to re-opt in accordance with the date proposed in Ext.P3 and pass appropriate orders in that regard as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of the judgment. Needless to say, since the petitioner has already retired from service, his retirement benefits shall also be recomputed in accordance with the orders to be so passed and arrears disbursed within a period of one month from the date of passing of orders by the first respondent as directed above.

Writ petition is disposed of accordingly.

S. SIRI JAGAN
Judge

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